



City of Dayton

Board of Zoning Appeals

Minute Record

September 28, 2021

1. BZA CASE PLN2021-00360; 2917 Philadelphia Drive

The applicant, Northwest Plaza Holdings LLC, requests two Bulk/Area Variances in order to construct a double-faced illuminated pylon sign (128 sq.ft. in area) and twenty-five feet (25') in height for multiple retail tenants along W. Siebenthaler Drive at 2917 Philadelphia Drive (Parcel R72 16308 0027). This parcel is located in the SGC Suburban General Commercial Zoning District within the Philadelphia Woods Planning District. The Variances requested are (1): relief from the maximum height requirement for free-standing signs and (2) relief from the maximum sign area for a free-standing sign.

Applicant:	Northwest Plaza Holdings LLC P.O. Box #40316 Brooklyn, NY 11204
Owner:	Northwest Plaza Holdings LLC 3550 University Blvd Suite 207 Jacksonville, FL 32216
Existing Land Use and Zoning:	Commercial Building; SGC
Surrounding Land Use and Zoning:	North: Harrison Township; Residential South: Golf Course; SR-1 East: Harrison Township; Residential West: Commercial Building; SGC
Land Use Priority Board:	North Central
Planning District:	Philadelphia Woods
Planning Staff Contact:	Keeghan White

Mr. White presented the case.

The applicant requests to construct double-faced illuminated pylon sign (128 sq. ft. in area) and twenty-five (25') in height for multiple retail tenants along W. Siebenthaler Drive at 2917 Philadelphia Drive. This sign would serve to promote the businesses located on the property which according to the applicant

include but are not limited to Planet Fitness, Shoe Show, Shoppers World, and Ross. The applicant states in the application that if the sign is not erected, these future tenants would cancel their leases. Due to the area and height of the proposed pylon sign, it is currently not permitted in a SGC Suburban Commercial Zoning District. Due to this, the applicant is requesting two bulk/area variances in order to place the sign on the property.

The subject property is currently a vacant strip mall that historically contained an Elder Beerman department store that closed in 2012. Since the closing of the store, the property has not had another tenant and has fallen into a state of disrepair with the building being boarded as early as 2018. In 2019, the applicant, who also owns the other buildings in the strip mall, purchased this property with the intention of reactivating the building and bringing in commercial tenants. Central to the solicitation of commercial tenants for the applicant is the installation of the pylon sign.

If approved, the requested variance would allow for the pylon sign to be constructed at the front of the second parking aisle on the west of the property near one of the entrances. The sign will be east-west facing in order to advertise the stores located on the property to drivers along W. Siebenthaler Drive. Currently, the maximum allowable height for a freestanding sign in the SGC District is six (6') feet and the proposed sign would be twenty-five (25') feet in height. The applicant has worked with Staff to bring the sign closer to compliance and has decreased the total height of the sign to twenty-one (21') feet. Although the proposed sign is fifteen (15') feet taller than allowed, the parcel directly to the east of the property in question contains a pylon sign that is between twenty (20') to twenty-five (25') feet in height providing precedent for this request. In relation to the existing sign, the proposed sign would be located approximately three hundred and seventy (370') feet to the west. The current maximum allowable sign area for a free-standing sign located in a "large lot" is 105 sq. ft. The proposed sign is 128 sq. ft.

Public Comment

The North Central Priority Land Use Board met via Zoom on Thursday September 10th and voted unanimously to approve the application as proposed. Staff has received one email from a resident whose residence borders the property in support of the project.

Staff recommendation

Staff would recommend approval of the application as submitted with no conditions.

Public Testimony

The architect for the applicant, Aaron Bodart of RSL Architects, reiterated the plan to renovate the commercial structure and restripe the existing parking lot.

Board Discussion

Mr. Ciani asked if the application looked clean and Mr. Brand and Ms. Tingle both responded in the affirmative.

Board Decision

A motion was made by Mr. Brand and seconded by Ms. Patterson, and carried to determine that there is a preponderance of reliable, probative and substantial evidence to make the specified

findings required under R.C.G.O. §150.120.10 and approve the application as submitted for a Bulk/Area Variance.

Mr. Bement	Absent	Ms. Tingle	Yes
Mr. Brand	Yes	Ms. Patterson	Yes
Ms. Graham	Yes	Mr. Ciani	Yes
Mr. Martin	Absent		

Approved by the Board of Zoning Appeals September 28, 2021

Tony Kroeger, Secretary
Board of Zoning Appeals



City of Dayton

Board of Zoning Appeals

Minute Record

September 28, 2021

2. BZA CASE PLN2021-00366; 401 E. Third Street

A Conditional Use application to approve an educational use (secondary grades 9 thru 12) located at 401 E. Third Street within the Urban Business District (UBD) in which schools (secondary-elementary/public-private) require conditional use review and approval.

Applicant:

Riverscape Career Tech High School
401 E. Third Street
DAYTON, OH 45402

Owner:

Canal II, LLC
4738 Gateway Circle,
Suite 200 Box
Dayton, OH 45440

Existing Land Use and Zoning:

Vacant Property; UBD – Urban Business District

Surrounding Land Use and Zoning:

North – Surface Parking; UBD – Urban Business
South – Commercial; UBD – Urban Business
East – Bar; UBD – Urban Business
West – Library; CBD-Central Business District

Land Use Priority Board:

Downtown

Planning District:

Downtown

Planning Staff Contact:

Susan Vincent

Ms. Vincent presented the case.

The applicant requests Conditional Use approval to allow an educational use (secondary grades 9 thru 12) at 401 E. Third Street within the Urban Business District (UBD) in which schools (secondary-elementary/public-private) require conditional use review and approval.

The subject property, located at 401 E. Third Street, was constructed as a retail structure but most recently hosted a charter school. Currently vacant, the applicant's proposal would continue the use of the structure for educational use as Riverscape Career Tech High School; a charter school serving grades 9 – 12.

The applicant proposes to open a new charter school for 130 students high school students within an existing vacant building downtown Dayton. The student population is non-traditional and focuses on low-income and at-risk youth who will benefit from a career-focused education.

Riverscape Career Tech will open at 7:30 am and operate through 4:30 pm, Monday through Friday. Ten employees will work on site. The operations plan does not include private bus services and assumes the majority of students will utilize public transit or guardian transportation to arrive at and depart from the site.

No exterior alterations are planned for the building other than the installation of a new wall sign. All existing lighting and landscaping will remain. The interior of the building is being reconfigured to accommodate the necessary lecture, lab and instructional spaces.

The application meets all of the general requirements as identified in the Zoning Code for School (Public/Private) Elementary/Secondary (150.565.27). It is located on an arterial street with primary access planned for the rear Lane. The pre-existing structure is oriented to the public street with a primary pedestrian entrance on E. Third and a dedicated sidewalk is located along the eastern wall of the building, providing a safe place for students to access the front entrance.

Pick-up and drop-off of students provides a potential conflict in regard to traffic congestion if it occurs on E. Third Street. The property has additional access points off Canal Street and S. Turpin Lane and the applicant plans to utilize these streets as primary egress paths. Any cueing guardian vehicles for pick-up or drop-off will be able to stack on Canal Street with minimal impacts to surrounding uses.

Public Comment

The Greater Downtown Priority Land Use Board met on Monday, September 13, 2021, voting to recommend approval of the application as submitted.

No other public comment was received by staff.

Staff recommendation

Staff recommends approval of the application with the following condition:

1. That student pick-up and drop-off shall be restricted to the rear of the site with vehicles utilizing Canal Street and S. Turpin Lane to access the property and not on E. Third Street.

Public Testimony

The applicant, represented by Jillian Thornton, was given the opportunity to speak. Ms. Thornton described the operations and mission of the Riverscape Career Tech High School, their willingness to meet the proposed condition, and why this downtown location makes sense for the school.

Ms. Patterson asked about signage for parents dropping off via S. Turpin Lane and Ms. Thornton affirmed the school's willingness to install appropriate signage.

Mr. Ciani asked about arrival/departure times and if all students have the same schedule. Ms. Thornton explained each student has an unique schedule and so arrival/departure varies.

Board Discussion

All board agreed the application looked good.

Board Decision

A motion was made by Ms. Patterson and seconded by Ms. Graham, and carried to determine that there is a preponderance of reliable, probative and substantial evidence to make the specified findings required under R.C.G.O. 150.535 and approve the application for a Conditional Use with the following condition:

1. That student pick-up and drop-off shall be restricted to the rear of the site with vehicles utilizing Canal Street and S. Turpin Lane to access the property and not on E. Third Street.

Mr. Bement	Absent	Ms. Tingle	Yes
Mr. Brand	Yes	Ms. Patterson	Yes
Ms. Graham	Yes	Mr. Ciani	Yes
Mr. Martin	Absent		

Approved by the Board of Zoning Appeals October 26, 2021

Tony Kroeger, Secretary
Board of Zoning Appeals



City of Dayton

Board of Zoning Appeals

Minute Record

September 28, 2021

3. BZA CASE PLN2021-00375; 1825 Kuntz Road

A Conditional Use and Bulk/Area Variances application to allow a truck terminal and semi-truck repair facility to locate at 1825 Kuntz Road, Dayton, OH 45404 within a I-1 (Light Industrial) Zoning District with a Water Protection (WP) Overlay. The variance application includes requests to: (1) waive the required floor drains connected to sanity sewer system for a semi-truck repair facility in a WP overlay.

Applicant:

Apex Engineering & Surveying
c/o Josh Liles
1608 N University Blvd.
Dayton OH 45042

Owner:

Malwa Company LLC
1255 Deeds Ave
Dayton, Ohio 45404

Existing Land Use and Zoning:

Truck Terminal/Repair; I-1/WP

Surrounding Land Use and Zoning:

North – T&R Welding/Benjamin Steel; I-1 Light Industrial with WP overlay
South – Dayton Phoenix Group; I-2 General Industrial with WP overlay
East – American Power/J&J Transportation; I-1 Light Industrial with WP overlay
West – LION Group; I-1 Light Industrial with WP Overlay

Land Use Priority Board:

Northeast

Planning District:

Old North Dayton

Planning Staff Contact:

Jeff Green

Mr. Green presented the case.

The applicant is requesting a Conditional Use to allow for a truck terminal and semi-truck repair facility to locate at 1825 Kuntz Road within a Light Industrial (I-1) Zoning District with a Water Protection (WP)

Overlay. Mr. Green noted that no further variances are being requested per the applicant and that staff was just notified right before the meeting of this.

The subject property is 3.718 acres located at the western corner of Kuntz Road and Janney Road. It sits within a Light Industrial (I-1) Zoning District with a Water Protection (WP) Overlay in the Old North Dayton planning district. It is surrounded by a mix of industrial uses including a LION Group, T&R Welding Systems, Dayton Phoenix Group, J&J Transport, and American Power. Surrounding zoning districts include General Industry (I-2) to the south and Light Industrial (I-1) to the north, east, and west.

Mr. Green stated that the history of the subject property: The subject property was damaged in the 2019 tornados and was sold to the current owner Malwa Company LLC in April of 2020 per county records. Per the Zoning Administrator, the property was occupied but no permits were obtained. As such the following events occurred:

- LNOV issued to owner in late December 2020
- Owner indicated that legal occupancy would be sought through 1st half of 2021, but none were submitted
- Filed in Dayton Municipal Court in Spring of 2021
- Pre-trial hearing in July 2021
- Application/submittal made shortly after Pre-trial hearing

In addition, the Department of Water issued a warning letter in March of 2021 for excessive trash accumulation and vehicle work being conducted outside. Since then, an inspection letter dated September 21, 2021 noted the following:

- Large spilled oil and adsorbent material near two used oil storage tanks in maintenance area of the facility.
- Trash accumulation and improper inoperable vehicle storage
- Vehicle repair and detailing must be performed indoors with floor drains connected to sanitary sewer.

Per the application submitted, the existing 43,240 square foot building would be utilized for semi-truck repair with 32 parking spaces shown for semi-truck parking and storage. Per discussions with the applicant, the truck parking area would be paved though no interior landscaping or light poles appear to exist along the northern and western portions of the truck parking area.

A total of 43 vehicle parking spaces for employees and visitors are provided which would meet the minimum amount of required parking per code. Three light poles are proposed around the employee parking area with some interior landscaping added which looks to meet the minimum landscape requirement of 5% so the requested landscaping variance is no longer required.

Three concrete aprons currently exist on the site (two on Kuntz Road and one on Janney Road) for ingress/egress with the primary ingress/egress points being located along Kuntz Road. The southern apron along Kuntz would be the principal access point for the semi-trucks as they come and go from the property.

A total of 26 street trees (15 along Janney Road and 11 along Kuntz Road) are proposed along the frontage of the subject property. The proposed street trees are composed of American Elms and Red Maples. Gravel around the truck parking and employee parking areas to the north and northwest edges of the property are proposed to be removed and replaced with grass. No further landscaping elements are proposed though adding landscaping would be beneficial to the adjacent properties to further shield the truck parking from view. A dumpster is located between the employee and truck parking areas, though no enclosure was seen (see

attached site photos). The applicant has indicated that they will not seek a variance for the lack dumpster enclosure.

Mr. Green noted that an important factor to consider is the appropriateness of the use and operation in context to the adjacent properties and area at large. Due to the 2019 Memorial Day tornado, the area was heavily damaged. However, much reinvestment has occurred in the area for those existing businesses that have remained as notably shown by the Dayton-Phoenix Group remodel. The tornado, as destructive as it was, can also provide opportunities to transform the area. The area has a high concentration of outside truck storage (truck terminals) and there is a concern regarding that adding further truck storage (and the increase in semi-truck traffic) would be a detriment. In addition, those businesses north of Kuntz and along Janney largely conduct business indoors with little of their operation(s) visible from the street. In contrast the proposed truck terminal would be highly visible from the street and have semi-trucks/trailers parked in view of the public. A recent decision by the board exemplified this with the denial of 1608 Kuntz which was denied with just 10 proposed semi-trucks parked on a 2.8 acre property (or 3.5 trucks per acre). This site, in contrast, is 3.7 acres and with a total of 32 truck parking spaces (8.6 per acre). While the 1825 Kuntz is different (has more acreage), it would also have a higher truck density and is situated on a Water Protection Overlay.

While the placement of floor drains are crucial to helping to mitigate and contaminants, the site is also proposed to have a 32 space semi-truck parking area where those semi-trucks parked on site could further leak contaminants that could get into the City's ground water supply. Inoperable trucks/vehicle work noted in March and September.

Staff has considerable concerns about the placement and operation of a truck terminal and semi-truck repair facility on this property. Not only did the property owner purchase the property and begin operation without any zoning review and approval, but (more significantly) the Department of Water has also issued orders – via the letter dated 9/21/2021, for violations where contaminants could leak into the ground water.

Public Comment

The Northeast Priority Land Use Board met on September 22, 2021, voting to recommend approval of the Conditional Use but the variances requested be denied.

Staff has received phone calls/emails from the following businesses/entities in opposition to the request:

- LION Group, 66 Jannery, opposed to the request
- Dayton-Phoenix, 1619 Kuntz, opposed to the request
- Norwood Medical, 1511 Kuntz, opposed to the request
- Mound Manufacturing, 33 Commerce, upset at site conditions
- TR Welding, 1 Jannery, opposed to the request
- Select Industrial, 220 Jannery, opposed to the request
- Dayton Economic Development Dept. opposed to the request
- City Manager Shelley Dickstein opposed to the request

Staff recommendation

Staff recommends the application for a Conditional Use be denied.

Mr. Kroeger noted that Mary Faulkner, Division Economic Development, will be coming up to have a short presentation if the board did not have any questions.

Mr. Brand wanted further clarification on the required floor drainage. Mr. Green stated that the

applicant's counsel advised they would not be seeking the variance for floor drainage right before the meeting.

Mary Faulkner, Division of Economic Development, stated that the current occupant bought the property in spring of 2020 and she got calls from upset business owners that summer due to the overall condition of the property. Noted the history of the property it is highly sensitive for ground water. Spoke on the violation history of the property and lack of compliance. Explained one of the principal concerns that this will be an ongoing issue where the city would not have the staff to constantly go after the code violations that are on site and that the overall condition is not getting better. Lastly spoke of the area and investment that businesses are taking there, while should this be approved, the city will be looking at these types of businesses that contribute to slum and blight.

Carl Daugherty, Zoning Administrator, added that when they issue a notice of violation, the operation is supposed to cease until they obtain an occupancy permit. He noted that during the history described by Ms. Faulkner, the operation on the site did not cease and was in violation of both the building and zoning codes.

The board asked about the violation history. Mr. Daugherty noted the violation history of the subject property.

Public Testimony

Gerald McDonald -representative of the applicant, 2700 Kettering Dr (Dayton OH), noted that the owner and engineer were in attendance should they need to answer any questions about the site. Acknowledged the violations on the site but noted that at the time (summer 2020) it was hard to get into contact with city staff due which contributed to delays/confusion. Spoke about the updates to the site to try and make the more compliant with code. Stated that they are going to comply with the required floor drains in addition to putting in a system outside on the truck parking area to catch any contaminants that come from the trucks being parked outside and fully intending to comply with the water standards. Noted that Northeast Priority Land Use Board recommended approval with no variances to which they would comply with.

Mr. McDonald went through the issues raised in the staff report and stated the property is being cleaned up and noted the upgrades such as landscaping and building upgrades and that the owners will fully comply with all codes. Compared the proposal to that of the truck terminals in close proximity and believes the proposal would be in harmony with the neighborhood. Noted that if the use was 300 feet down, then the use would be permitted by right and this meeting would not be necessary.

Ms. Tingle asked about the trash accumulation and inoperable vehicles. Mr. McDonald stated that the trash accumulation was due to cleaning up the building but would need to defer to the owner for full details. The board questioned what the difference was between what was done in the past vs. what would be done in the future. Mr. McDonald stated that in the past the owner did not understand the requirements but is now willing to commit to be in compliance and understands what needs to be done. Mr. McDonald went over the history of the violations to note the difference in understanding from when the violation was first reported vs. present. Mr. Daugherty explained the history of the violations and when that communication occurred. Mr. McDonald noted that the owner tackled one issue at a time, but also spoke on a few of the opposition correspondence received and that some of the opposition was due to originally seeking a variance from the source water requirements of which they are no longer asking variances for.

Josh Liles (applicant) - Apex Engineering, 1068 N University Blvd (Middletown OH), spoke on the plan to capture the water runoff and technical details regarding the plan. Explained the topography and how runoff would flow through the site.

Mr. Brand asked if this was a proposal or if the owner is contracting with Apex. Mr. Liles noted that through conversations with Jeff Green, one of the large concerns was the placement of the site in the Source Water Protection Area and that is why they are proposing a runoff collection system now to help remediate the concerns regarding the runoff. Mr. Liles gave the board a document explaining the plan.

Mr. Kroeger asked for a copy of the item Mr. Liles gave the board as it was not submitted to staff previously.

Mr. Liles explained how the runoff system would work on this site and how it ties into public sewer. Ms. Patterson asked if prior to the week before the BZA meeting, the applicant was unaware of the water issues. Mr. Liles confirmed that they were unaware of the major concerns. Mr. Daugherty explained that there were two water issues: 1) what happens inside the building 2) and the runoff from outside.

Mr. Brand noted that the new water runoff plans should be sent before staff and water engineering so the board could feel more confident about a decision. Mr. Daugherty noted that they would be required to comply with water engineering standards, though a related requirement is through the division environmental management to oversee compliance with the Source Water Protection Area. Mr. Daugherty further explained the requirements through environmental management.

Mr. Brand stated that he is concerned about approval based on the history, but if they commit to meeting the standards it could be approvable. Mr. Brand floated the idea of tabling it so the applicant could show that the standards would be met. Ms. Tingle agreed as they have some unknowns right now. Mr. Daugherty stated that something that concerned him is that during the course of time since the violation, they have continued to operate from the outset and having vehicle work done outdoors. He further explained that to him if you were going to apply for a conditional use, you would try to operate in the confines of the ordinance.

Mr. McDonald stated that what he thinks it comes down to is will this use be permitted, because if it is, they will be required to comply with the requirements of the code. He noted that what they are looking for is if this is a Conditional Use that could be approved. Mr. McDonald asked that the board approve the request and reiterated that they would be required to meet code.

Board Discussion

Mr. Ciani noted that he was concerned about the checkered past. Mr. Ciani further explained that the aquifer is the region's greatest asset, and that the applicant having not carried through his promises in the past is troubling to him. Ms. Patterson noted she was concerned that a notice a violation was issued nearly a year ago and the applicant continued to work did not lend itself to a willingness to comply.

Mr. Brand agreed that it was troublesome, but the applicant has come in and said they will comply. We need to look at the standards and if we deny it, we need to make sure we are denying it in accordance with the standards. The board discussed the noncompliance by the owner.

Ms. Graham questioned if they could postpone the decision until the applicant is in compliance with the code. Mr. Ciani noted they are not an enforcement group but could potentially postpone until the court hearing on this case, but it is a judgement call. Mr. Ciani asked Mr. Len Bazelak (Law Dept.) for some advice on postponement.

Mr. Bazelak noted that the board has discretion to table the request pending further information on whether standards would be met or court opinion. However, the issue is whether or not the standards of

the conditional use section are being met. Some of that does not depend on the Source Water Protection or other issues.

Mr. Daugherty added that being at the pre-trial hearing the judge is looking for how this board's decision.

Mr. Ciani noted Criteria (A) of R.C.GO. 150.535. Mr. Brand stated that if it was operated correctly it may fit. Ms. Patterson noted that the criteria was "operated and maintained" harmoniously. Mr. Ciani stated operation and maintenance was not a forte so far and stated they might site "A" as a reason for denial but also noted "B." The board discussed the criteria for standards.

Board Decision

A motion was made by Ms. Tingle and seconded by Ms. Patterson, and carried to determine that there is not a preponderance of reliable, probative and substantial evidence to make the specified findings required under R.C.G.O. 150.535 specifically subsections (A) and (B), and deny the application as submitted for a Conditional Use.

Mr. Bement	Absent	Ms. Tingle	Yes
Mr. Brand	No	Ms. Patterson	Yes
Ms. Graham	No	Mr. Ciani	Yes
Mr. Martin	Absent		

Approved by the Board of Zoning Appeals October 26, 2021

Tony Kroeger, Secretary
Board of Zoning Appeals



City of Dayton

Board of Zoning Appeals

Minute Record

September 28, 2021

4. BZA CASE PLN2021-00377; 138 S. Wilkinsom Street

A Conditional Use application to approve an educational use (pre-K thru 8) located at 138 S. Wilkinson Street within the Central Business District (CBD) in which schools (secondary-elementary/public-private) require conditional use review and approval.

Applicant:

The Greater Dayton School
10510 N. Springboro Pike
DAYTON, OH 45342

Owner:

MESSENGERS OF MERCY MINISTRIES
138 S. Wilkinson Street
DAYTON, OH 45402

Existing Land Use and Zoning:

Vacant Property; CBD – Central Business District

Surrounding Land Use and Zoning:

North – Surface Parking; CBD – Central Business
South – Multi-Family housing; CBD-Central
Business
East – Religious Use; CBD-Central Business
West – Surface Parking; CI-Campus Institutional

Land Use Priority Board:

Downtown

Planning District:

Downtown

Planning Staff Contact:

Susan Vincent

Ms. Vincent presented the case.

The applicant requests Conditional Use approval to allow an educational use (pre-K thru 8) at 138 S. Wilkinson Street within the Central Business District (CBD) in which schools (secondary-elementary/public-private) require conditional use review and approval.

The subject property, located at 138 Wilkinson Street, is owned by the Messengers of Mercy Ministries and used to host their church operations. Currently vacant, the applicant's proposal would re-use the structure for the Greater Dayton School, a private PreK – 8 school. Initial use will include tutoring

services with enrollment expected for the 2022 school year. In 2023, the school would move to their permanent location at Deeds Point.

The applicant proposes to temporarily open a private PreK – 8th grade school for 120 students within an existing building downtown Dayton. The student population will be exclusively those from under-resourced communities and those living below 130% of the poverty line. Initial use of the building (through winter 2021 -spring 2022) will be limited to a tutoring program for approximately 40 students with 3 staff. In August 2022, the school will open for 120 students with 25 staff members. After the 2022 school year, the school will relocate to its permanent location at Deeds Point.

The Greater Dayton School will open at 8:00 am and operate through 5:00 pm, Monday through Friday. The school will utilize 2-3 private buses and expects approximately 10-20 families to drop children off on site daily. Parent vehicles will cue on E. Fifth while buses will load and unload on S. Wilkinson. There are existing parking meters on both streets which will need to be closed during the school's operations. The City's Civil Engineering department will need to review and approve the egress plan and will work with the applicant to close appropriate meters in support of the pick-up and drop-off plan.

No exterior alterations are planned for the building and no structural changes will be made to the interior of the building. Employees will park in the adjoining lot to the east and north of the existing structure.

The application meets most of the general requirements as identified in the Zoning Code for School (Public/Private) Elementary/Secondary (150.565.27). It is located on an arterial street, however, primary vehicular access will occur along the front of the building which provides potential conflicts with the intersection. The applicant's safety plan utilizes staff supervision of pick-up and drop-off, dedicated crossing guards, and a rolling drop-off/pick-up lane for parents. These interventions mitigate potential conflicts due to the building's location and entrance orientation. The pre-existing structure is oriented to the public street with a primary pedestrian entrance on S. Wilkinson.

Public Comment

The Greater Downtown Priority Land Use Board met on Monday, September 13, 2021, voting to recommend approval of the application as submitted.

The applicant provided multiple letters of support for the application which are included in the board packet.

Staff recommendation

Staff recommends approvals of the application as submitted.

Public Testimony

The applicant, represented by AJ Stich, was given the opportunity to speak. Mr. Stich described the operations and mission of the Greater Dayton School, the safety plan for arrival and departure, and why this location makes sense for the school. owners planned operation and trash receptacles proposed on site.

Mr. Ciani and Ms. Patterson discussed the mission, admissions criteria, and total enrollment planned for the school.

Board Discussion

Mr. Brand and Ms. Lingle noted that the application looked good and clean.

Board Decision

A motion was made by Mr. Brand and seconded by Ms. Graham, and carried to determine that there is a preponderance of reliable, probative and substantial evidence to make the specified findings required under R.C.G.O. 150.535 and approve the application for a Conditional Use as submitted.

Mr. Bement	Absent	Ms. Tingle	Yes
Mr. Brand	Yes	Ms. Patterson	Yes
Ms. Graham	Yes	Mr. Ciani	Yes
Mr. Martin	Absent		

Approved by the Board of Zoning Appeals October 26, 2021

Tony Kroeger, Secretary
Board of Zoning Appeals



City of Dayton

Board of Zoning Appeals

Minute Record
September 28, 2021

5. BZA CASE # 2021-00388 – 600 Xenia Ave.

A **Conditional Use** request to permit a mixed-use building with a restaurant on the first floor and two apartment dwelling units on the second floor at 600 Xenia Avenue within the ENC Eclectic Neighborhood Commercial District. Also, a **Variance** request to reduce the required off-street parking from 14 spaces to 2 spaces.

Applicant	Steve Dillhoff 7026 Corporate Way, Suite 100 Dayton, OH 45459
Owner	Same as above
Existing Land Use and Zoning:	Historic vacant storefront; ENC
Surrounding Land Use and Zoning:	North: Twin Towers Plaza and Mission of Mary community garden; T South: Single-family dwellings; MR-5 East: East End Community Services; ENC West: New Hope Church; ENC
Land Use Committee:	Southeast
Planning District:	Twin Towers
Planning Staff Contact:	Abigail Free

Ms. Free presented the case. The property fronts on the south side of Xenia Avenue at the east corner of Steele Avenue. There is also access to the property from Noel Court to the south. The pedestrian-oriented commercial corridor where the property is located is surrounded by transitional and single-family zoning. The two-story structure on the property has a historic look but is not located in a historic district. A restaurant is proposed for the first floor, and two apartments are proposed for the second floor. The lot is about 120-feet deep, half of which is occupied by the structure and the other half occupied by a yard and trees. Two parking spaces, one regular and one accessible with a loading area, are proposed behind the trees, perpendicular to Noel Court. The proposed floor plan for the restaurant shows 24 seats inside and 24 seats outside behind an existing privacy fence along Xenia Avenue.

Ms. Free reviewed the general requirements for a Conditional Use: the storefront must face the public street, which it does; as an existing building, it meets the design standards of Section 150.325.6; no vehicular access is proposed; no accessory structures are proposed; and the building and materials are existing. Ms. Free then reviewed the specific requirements for a Conditional Use in an ENC: parking must

be behind the front line of the building and accessed from the rear, which the two proposed spaces are; the use must enhance and reinforce the character of the neighborhood, which, as an existing commercial structure with historic construction, it does; as required, the ground floor would be commercial and an active pedestrian environment and the upper floor would be dwelling units; no accessory structures are proposed; and the reuse of the existing building is what is recommended. Ms. Free then reviewed the requirements for restaurant outdoor dining: the proposed side yard location with front access is a permitted location; the location will not be within the ROW; while the current proposed landscaping includes the existing privacy fence, the applicant is open to removing the privacy fence and adding planters or other landscaping to define the outdoor dining area; no shade or covering is proposed; the outdoor dining area will be clean and litter-free; and the outdoor dining area will be under the same management as the indoor dining.

In explaining the applicant's need for a Variance for off-street parking, Ms. Free reviewed the requirements: a restaurant requires 10 per 1,000 square feet; and apartments require 1.5 per unit. As the floor area of the proposed restaurant is 1,400 square feet and the number of proposed apartments is two, the Zoning Administrator determined that 17 off-street parking spaces would be required. Per the Change in Occupancy Reduction, if the off-street parking increases by 150% over the previous use, 80% of the off-street parking will be required for the new use. As the previous use was retail and required far fewer off-street parking spaces, the required off-street parking spaces for the proposed new use has been calculated to be 14 spaces, of which the proposed site plan shows two. The existing lot is 35-ft wide and will not allow for standard perpendicular parking and aisle width. An alternative would be to provide a 60-ft curb cut along Steele Avenue to allow for approximately six parking spaces total on site, but this would eliminate three on-street parking spaces. The accessible space could be relocated on-street nearest to primary entrance with City Traffic Engineering approval. If this were approved, new signage would be required on-street. Ms. Free proposes that three spaces and a small dumpster will fit at the rear of the property and can be marked for "tenants only" on site.

Ms. Free believes that all of the standards for a Conditional Use can be met. Ms. Free stated that the Variance is substantial at an 85% reduction from what is required, but the lot is narrow and cannot be increased in size. The reuse of the existing building will contribute to the revitalization of Xenia Avenue.

Community feedback was generally supportive of the project, although some voiced concerns in regard to parking. The Twin Towers Neighborhood Association is in support of the proposed uses. The Southeast Land Use Committee recommended approval with conditions: backyard to be redesigned to allow for more off-street parking, landscaping will include planters, bicycle parking will be provided, and a dumpster with enclosure will be located on site. East End Community Services is in support of the restaurant but has concerns regarding the lack of parking.

Staff recommends approval of the approval of the Conditional Use and Variance with conditions:

1. Owner shall apply to City Traffic Engineering for an accessible parking space to be located on Steele Avenue at Xenia Avenue. Upon approval, the accessible space on the property may be removed.
2. Remove wood privacy fence along Xenia Avenue and replace with decorative ornamental fence and/or landscaped planter boxes.
3. Locate dumpster and enclosure on-site at rear, 8-ft max width enclosure.
4. Provide 3 off-street parking spaces at rear (new striping) to be marked for tenants only.
5. Provide bicycle parking on site.

It was asked if there was no way to provide any restaurant parking. Ms. Free replied that on-street parking is available on Steele Avenue and Noel Court, and that the applicant expects to attract more pedestrians to the proposed breakfast and lunch café environment than those who would arrive in a vehicle.

When asked about the capacity of the restaurant, Ms. Free replied that the proposed floor plan is based on the building code and shows 48 seats. Ms. Free added that the off-street parking requirements are based on square footage and is not affected by the number of seats.

Public Testimony

The project manager, Adam Eaton, spoke to the efforts to add more off-street parking to the lot. It would be possible to add up to six parking spaces, but the required curb cuts would eliminate roughly the same number of on-street parking spaces. Mr. Eaton stated that there is ample on-street parking, and that they would welcome the addition of a designated on-street accessible parking space near the main entrance to the restaurant.

The owner, Steve Dillhoff, spoke to wanting to bring a place to eat to the neighborhood. Mr. Dillhoff stated that by his estimation, 24 cars could park on the streets surrounding his property without parking in front of a person's home. He expects that his proposed restaurant would attract pedestrians looking for a quick breakfast or lunch as opposed to people arriving in cars to sit and dine for multiple hours. Mr. Dillhoff stated that housing is needed in the area. He also stated that he has other rental and commercial properties in the Dayton area. Mr. Ciani asked if Mr. Dillhoff has seen staff's conditions and if he would be amenable to them. Mr. Dillhoff replied that yes, he has seen them and has no problem with any of them, adding that he would want to make any decorative fencing or landscaping around the outdoor dining area secure.

Neighbor, vice-president of the East End's Neighborhood Development Corporation, and lead team member of New Hope Church, James Barrett, 401 Xenia Ave., said that he has spoken to the president of the Twin Towers Neighborhood Association, and they are in great favor of the project. Mr. Barrett stated that when he moved to the street in 2013, there were nine for-profit businesses, and since then, five have closed and no new businesses have opened. He has heard from his neighbors that Xenia Avenue needs improvement and that there is no where to go to meet for a meal or a cup of coffee. Mr. Barrett stated that Xenia Avenue has a number of obstacles to overcome in moving toward revitalization, including absentee landlords, drugs, addiction, prostitution, disinvestment, and vacant structures. Mr. Barrett stated that he has never seen the parking lot for New Hope Church, which has 29 spaces, full. Mr. Barrett stated that Mr. Dillhoff's property is in a centralized location that would be accessible to the 35% of neighborhood residents who do not have a car. Mr. Barrett feels that it would be inappropriate to limit the optimism that this project provides to the community by applying 20th century auto-centric standards to a 19th century neighborhood.

Board Discussion

Mr. Ciani asked if there was any discussion, of which there was not.

Board Decision

A motion was made by Ms. Tingle and seconded by Ms. Patterson, and carried to determine that there is a preponderance of reliable, probative and substantial evidence to make the specified findings required

under R.C.G.O. 150.535 and R.C.G.O. §150.120.10 (D)(1) and approve the applications as submitted for a Conditional Use and Variance with conditions:

1. Owner shall apply to City Traffic Engineering for an accessible parking space to be located on Steele Avenue at Xenia Avenue. Upon approval, the accessible space on the property may be removed.
2. Remove wood privacy fence along Xenia Avenue and replace with decorative ornamental fence and/or landscaped planter boxes.
3. Locate dumpster and enclosure on-site at rear, 8-ft max width enclosure.
4. Provide 3 off-street parking spaces at rear (new striping) to be marked for tenants only.
5. Provide bicycle parking on site.

Mr. Bement	absent	Ms. Tingle	yes
Mr. Brand	yes	Ms. Patterson	yes
Ms. Graham	yes	Mr. Ciani	yes
Mr. Martin	absent		

Approved by the Board of Zoning Appeals on October 26, 2021.

Tony Kroeger, Secretary
Board of Zoning Appeals
